rates.[24] In 1996, the U.S. settlement deficit totaled $5.4 billion, double what it was in 1990.[25] Facilities-based competition of the kind the new SBC intends to provide on a global basis will, over time, push settlement rates down, as well as lower the cost of doing business in foreign countries.[26]

Ameritech and SBC understand the need to position their international investments for the long term. This means driving down historical subsidies and repricing historically subsidized services. For U.S.-based companies, this means lower international termination rates and, therefore, lower overall telephone bills and reduced barriers to conducting export businesses. Weller Aff. ¶ 22. Two of three European companies in which Ameritech had invested today are already within the FCC's target pricing guidelines for international settlement rates, and the third – MATÁV – has among the lowest average rates of Central European telephone companies. Id.

The merger of SBC and Ameritech will also serve the public interest by facilitating international trade and improving U.S. competitiveness.[27] As countries

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[24] See In re International Settlement Rates, Report and Order, 12 FCC Rcd. 19806, ¶ 7 (1997). See also id. at ¶ 10 ("At a minimum, the increased competition in the global IMTS market that will result from this [WTO] trade agreement will exert downward pressure on accounting rates in competitive markets as new entrants compete to terminate foreign traffic.").

[25] Id. at ¶ 13.

[26] See In re Regulation of International Accounting Rates, Fourth Report and Order, 11 FCC Rcd. 20063, ¶ 16 (1996) ("The introduction of effective facilities-based competition in some foreign markets creates the option of an international carrier acquiring control of both the international transport circuit and the international gateway switching facility. That carrier could then terminate an international call at domestic interconnection rates, a potentially far more efficient arrangement than the current settlements process.").

[27] President Clinton recently remarked that: "The test of all these mergers ought to be this: Does it allow them to become more globally competitive in ways that don't unfairly raise prices or cut the quality of service to consumers in America?" Jackie Calmes, Administration to Study Business Concentration, Wall St. J., May 13, 1998, at A2

develop economically and socially, they become more stable, which in turn makes them attractive markets for international investments – not only in the telecommunications sector, but also in other lines of business as well.[28] In addition, as a country's economy grows, the demand for U.S. exports will grow, especially where U.S. businesses have established a presence.

SBC's and Ameritech's investments and influence in foreign markets have opened, and will continue to open, these markets to other U.S. businesses, particularly those businesses supplying the many products and services that are required to develop a modern telecommunications infrastructure. Weller Aff. ¶ 23.[29] In Hungary, for example, U.S. vendors have sold such services as: data warehousing systems (HP), testing equipment (Teradyne), automated directory assistance platforms (IBM), network monitoring systems (Digital), wireless local loop technology (Motorola), workforce

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(quoting an interview by Al Hunt of The Wall Street Journal and CNBC with President Bill Clinton in Washington, D.C. (May 4, 1998)). See also Prepared Statement of Kelly R. Welsh, Executive Vice President and General Counsel, Ameritech Corporation, To the House Committee on the Judiciary (June 24, 1998), available at 1998 WL 347389; Prepared Testimony of Edward E. Whitacre, Jr., Chairman and Chief Executive Officer SBC Communications Inc., Before the Antitrust, Business Rights and Competition Subcommittee, Senate Judiciary Committee (May 19, 1998), available at 1998 WL 257699. See also 1997 Trade Policy Agenda under 1996 Annual Report of the President of the United States on Trade Agreement Program, March 1997, at 1, 5 ("Trade is more important than ever to the U.S. economy . . . President Clinton has designed a fair trade policy that seeks to take advantage of the increasingly global economy" in a manner that benefits U.S. business and families.).

[28] Robert J. Saunders et al., Telecommunications & Economic Development 18, 199-251 (2d ed. 1994) (discussing results of various surveys conducted on telephone communications in developing countries).

[29] The Commission has recently initiated a rulemaking to, among other things, implement the Mutual Recognition Agreement ("MRA") between the United States and the European Community ("EC"). When the MRA is fully implemented, it will be easier for U.S. manufacturers to market their products in Europe without obtaining additional equipment authorizations. See In re 1998 Biennial Review, Notice of Proposed Rulemaking, GEN Dkt. No. 98-68, FCC 98-92, 1998 WL 244623, ¶ 1 (May 14, 1998).

management software (Silicon Graphics) and fault tolerant computers (Tandem/Compaq). Sales by these companies have been estimated at over $200 million over the life of the collective contracts. Id.

As the combined SBC/Ameritech expands its foreign operations into newly liberalized countries, in ways made possible through this merger, it will continue its past practice of using the best firms to supply goods and services, many of which are U.S.-based suppliers. This practice serves not only the interests of U.S. companies (small and large), but will contribute to the overriding U.S. goal of reducing the U.S. trade deficit. In addition, by exporting world-class purchasing economies, the new SBC will be able to reduce affiliates' costs of acquiring telecommunications equipment, thereby expanding the scope of investments and new infrastructure/capabilities available in these foreign countries. This investment, as discussed above, will drive improved cost structures and greater availability and quality of telecommunications services in these countries.

4. Significant Benefits Result from U.S. Investments in Foreign Telecommunications Markets

Significant social and economic benefits in the foreign country result from the types of international investments made by SBC and Ameritech. It is clearly in the public interest to support long term economic development in developing countries.[30] And, in all countries, universal access to high-quality telecommunications services facilitates social and economic development. The end result is a better quality of life for its citizens

[30] There is a rich literature demonstrating the linkage between telecommunications investments and economic development and how such investments benefit both the U.S. and international markets. See, e.g., Robert Z. Lawrence and Robert E. Litan, Brookings Policy Brief No. 24, Globaphobia: The Wrong Debate Over Trade Policy 6 <http://www.brook.edu/es1policy/polbrf24.htm>; Robert J. Saunders et al., Telecommunications & Economic Development 18, 199-251 (2d ed. 1994).

since, by improving its telecommunications infrastructure, the country is better able, among other things to: (i) unify its economy (by facilitating better communications and commerce in remote areas); (ii) participate in the global economy; (iii) increase efficiencies in economic production and distribution; and (iv) improve emergency and other services.

There are a number of other foreign-country economic benefits that flow from investments in telecommunications infrastructure. For example, as the telephone company becomes more operationally efficient and profitable, the government receives more revenues, as a shareholder, and more taxes – both directly from the telephone company itself and indirectly from the employees and businesses that supply goods and services to the telephone company. For example, when Ameritech held a substantial strategic investment in Telecom New Zealand, the company transitioned from being a subsidized government-owned company to the largest taxpayer in New Zealand.[31] Moreover, the telephone company often provides liquidity and both reduces volatility and becomes the leading market-capitalized firm in the country's stock market, as in Brazil, Canada, Denmark, France, Greece, Hungary, Japan, New Zealand, Spain and Singapore.[32] Since Ameritech invested in MATÁV, it has become the first central European telephony company to be listed on the New York Stock Exchange and it has the highest market capitalization of any Hungarian corporation.[33]

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[31] Telecom New Zealand paid $219 million in U.S. dollars in taxes in respect of the fiscal year ending March 31, 1998. See Telecom New Zealand 1998 Annual Report at 39.

[32] Business Week, July 13, 1998, at 52-91; see also Forbes, July 27, 1998, at 120-154.

[33] Business Wire, Inc., Nov. 19, 1997, <http://www.businesswire.com>.

Ameritech and SBC have demonstrated their commitment to providing investment capital, personnel and expertise in foreign markets. They have helped build out the public networks in Hungary, Mexico and South Africa, which has resulted in improvement in the quality of life in those countries. For example, in South Africa, through its investment in Telkom SA, SBC has committed to an aggressive universal service and build-out obligation to increase the availability of telephone service to all of South Africa, with a particular emphasis on rural and other underdeveloped portions of that country. SBC is actively working to add 2.5 million access lines in South Africa within five years. In that country, where only 10 percent of the nonwhite households — which comprise 87 percent of the population — have telephone service, SBC's commitment to constructing 2.5 million access lines in five years offers tremendous opportunities. In addition, SBC is working to align the employee workforce more closely with South Africa's demographics. See Attachment G to Kahan Aff. In Hungary, where Ameritech has invested in MATÁV - Hungary's largest telephone company - 900,000 new lines have been added in the last 4-5 years, a 60 percent increase.

5. The Telecommunications Sector Is a Strategic Asset Requiring Experienced, Well-Capitalized U.S. Companies To Compete Effectively

Telecommunications has long been recognized as a strategic asset, essential to U.S. national and international interests. Few nations will produce even a single global, facilities-based carrier.[34]

Other U.S. companies have entered these markets through means other than direct investments or facilities-based entry. Schmalensee/Taylor Aff. ¶ 22. For example,

[34] See In re the Merger of MCI Communications Corp. and British Telecomm. plc, Memorandum Opinion and Order, 12 FCC Rcd. 15351, ¶¶ 57, 91, 130 (1997).

AT&T and Sprint are both already members of global alliances – WorldPartners and Global One, respectively.[35] Global One teams Sprint up with incumbent monopoly carriers in more than 65 countries.[36] On the other hand, the combined WorldCom/MCI has facilities in 21 foreign cities and clearly plans to compete worldwide.[37] The new SBC will have the resources and commitment to project U.S. telecommunications services and marketing expertise throughout the world. Weller Aff. ¶ 12.

Around the globe, "liberalization and the introduction of facilities-based competition" is "accelerating a shift from single national champion carriers, whether government- or privately-owned, to multiple carriers and more diverse markets."[38] By the year 2000, open telecommunications markets will be the norm in countries that

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[35] One other global alliance (Unisource) unites incumbents in the Netherlands, Sweden, and Switzerland. A fourth "alliance," Cable & Wireless, has ownership interests in over 25 foreign local incumbents and at least 10 other foreign long distance and wireless carriers. Virtually every major incumbent foreign carrier is now a member of one of these alliances. "Such alliances are truly global when they are aimed at the provision of global products (i., e., seamless provisioning of worldwide services) through single points of contact with global reach (i.e., multinational carrier groups) to global markets (i.e., international requirements of multinational customers)." See FCC International Bureau, Global Communications Alliances 2 (Feb. 1996), available at <http://www.fcc.gov/ib>.

[36] See Global One, Key Facts About Global One (visited July 15, 1998) <http://www.globalone.net/en/press/facts.html>.

[37] See WorldCom, Building the Right Networks (visited July 16, 1998) <http://www.wcom.com/investor_relations/annual_reports/1997/networks/europe.html>. WorldCom/MCI will have offices in 65 countries. See WorldCom Press Release, WorldCom and MCI Announce $37 Billion Merger (Nov. 10, 1997), available at <http://www.wcom.com/about_worldcom/ press_releases/archive/1997/111097.shtml>.

[38] FCC International Bureau, Global Communication Alliances 1 (Feb. 1996), available at <http://www.fcc.gov/ib>. See also K. Wallace, Lehman Brothers, Inc., Controlled Chaos Of Telecommunications -Industry Report, Investext Rpt. No. 3312108 at *1 (Dec. 22, 1997) (finding that "the deregulatory process is providing new, potentially advantageous investment opportunities.").

account for over 80 percent of the world's population and economic activity.[39] See Table 20 in the "Tables" attachment.

Neither Ameritech nor SBC individually, however, can now effectively compete for large business customers with the larger European and Japanese telecommunications companies in their home countries. Weller Aff. ¶ 13; Kahan Aff. ¶ 68. Although Ameritech's estimated market value investment of approximately $8 billion in European telecommunications investments exceeds that of any other U.S. telecommunications company, that investment, even when combined with SBC's international investments, still falls short when compared to the resources available to British Telecom, Deutsche Telekom, France Telecom and Nippon Telegraph & Telephone, either directly or through their partnerships.[40] Moreover, the capital required to compete for a significant facilities-based stake in the in-country service market in the U.K., Germany, France or Japan is considerable. Thus, it will require the combined resources (financial and personnel) of a merged SBC/Ameritech to compete most effectively in the global telecommunications market on par with such key foreign carriers and the various alliances. Weller Aff. ¶ 12.

These considerable investments are commensurate with the enormous scope of the competitive challenge. The global telecommunications market generated an

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[39] On February 15, 1997, 69 countries, including the United States, concluded an agreement to open their markets for all basic telecommunications services to competition from foreign-owned companies. The agreement, negotiated under the auspices of the World Trade Organization ("WTO"), "covers 95% of the global market for basic telecommunications services." In re Rules and Policies on Foreign Participation in U.S. Telecommunications Market, Order and Notice of Proposed Rulemaking, 12 FCC Rcd. 7847, ¶ 1 (1997). See also WTO Press Release, Ruggiero Congratulates Governments on Landmark Telecommunications Agreement (Feb. 17, 1997), available at <http://www.wto.org/wto/press/press67.htm>.

[40] See subsection E, below.

estimated $700 billion in revenues in 1996,[41] and it has been growing 20 percent per year.[42] International traffic has been growing faster still, at a rate of nearly 30 per cent in the past two years.[43] As the Commission's International Bureau has noted, multinational businesses alone accounted for "several billion dollars" in international traffic in 1996,[44] and other analysts see that segment growing to $25 billion by the year 2000. Over three-quarters of the 1,000 largest multinational corporations are headquartered in the five countries – the U.S., Japan, France, Germany, and the U.K. – that generate over half of international voice traffic.

The combined SBC/Ameritech will be well positioned to follow large multinational customers through its new geographical reach. Serving customers like these is "the most important – and most difficult – challenge ahead for the U.S. national carriers."[45] Smaller businesses with fewer international needs, however, will also benefit

41 See International Telecommunication Union, World Telecommunication Development Report 1996/97 7 (1997). Telephone service revenue accounted for an estimated $472 billion of this revenue; within this category, an estimated $69 billion was generated by international telephone service. Mobile services generated an estimated $118 billion. Other services, including leased circuits, data communications, telex, and telegraph, generated an estimated $80 billion. Id.

42 E.M. Greenberg, et al., Morgan Stanley, Dean Witter, Global Telecommunications Monthly-Industry Report, Investext Rpt. No. 2640322, at *23 (December 2, 1997). See generally M. Weaver, et al., Duff & Phelps Credit Rating Co., AT&T Corp. – Company Report, Investext Rpt. No. 2577806, at *6 (Aug. 13, 1997) (asserting that "[t]he global market will grow rapidly as new markets open and worldwide business expands [and] [t]he demand for global telecommunications service is growing . . .").

43 See Telegeography 1997/98 figure 1 (1997) (noting a nearly 30 percent growth rate based on projected figure for 1997).

44 See FCC International Bureau, Global Communications Alliances 5 (Feb. 1996), available at <http://www.fcc.gov/ib>.

45 See Mary Thyfault, Big Four Carriers Square Off, Information Week, May 5, 1997, at 45 (noting that the "Big Four" are AT&T, MCI, Sprint, and WorldCom and that "about 10 percent of U.S. companies switch carriers each year."). The key to serving these companies is the ability to offer substantially all services everywhere.

from the new SBC's international reach. As a facilities-based service provider in both the U.S. and in international markets, the new SBC will be in a position to provide an array of services to meet these smaller companies' needs.

In summary, this merger will allow the new SBC to take advantage of economies of scope and scale to compete effectively in the global telecommunications market, as a major, facilities-based, U.S. flagship carrier. That will provide significant benefits for U.S. companies, consumers and telecommunications suppliers. Weller Aff. ¶¶ 19-23. The merger occurs during a watershed period, as markets are opening and the information/telecommunications marketplace is fragmented. The same public interest and policy considerations underlying the Commission's initiatives to facilitate the entry of U.S. long distance carriers into the domestic local exchange market are present in the international market and should be applied here. Large U.S. telecommunications carriers should be encouraged to expand internationally. This merger will allow the Commission to achieve its "objective of promoting competition in the U.S. market, and of achieving a more competitive global market for all basic telecommunications."[46]

D. The Merger Will Produce Substantial Efficiencies and Customer Benefits

The SBC/Ameritech merger will enable the combined company more effectively to serve its customers and will produce significant cost savings and enhanced revenues for the combined company, due to synergies in new product development and marketing, purchasing discounts and the elimination of duplication. These efficiencies, which are

[46] See In re Rules and Policies on Foreign Participation Order in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, IB Dkt. No. 97-142, FCC 97-398, 1997 WL 735476, ¶¶ 3, 5 (Nov. 26, 1997) (the Foreign Participation Order "represents the culmination of efforts taken by the Commission to promote competition in the global market for telecommunications services").

described in the accompanying Affidavits of Martin A. Kaplan of SBC and R. Jason Weller of Ameritech, as well as the accompanying Affidavits of economists Richard Gilbert, Robert Harris, Richard Schmalensee and William Taylor, will benefit existing and new residential and business customers both within and outside of the combined company's territory. The resulting increased cash flow will make the combined company a more effective competitor, enhance and expand services to existing customers, and help support the financial requirements for the new SBC's in-region, out-of-region and global plans. Kaplan Aff. ¶ 32. SBC estimates that, by 2003, the merger will enable it to realize annual expense savings of $1.17 billion, reductions in capital costs of $260 million and revenue increases from the sale of new and existing services totaling $778 million. Id. ¶¶ 7, 17. An additional $300 million is expected from reduced costs and enhanced revenues in the combined company's long distance operations after it is permitted to provide in-region long distance services. Id. ¶ 26.

This additional $2.5 billion in expense savings and revenue increases will not only benefit the combined company's existing network and customer base, but also allow for investments in the new, competitive local facilities in the 30 cities targeted for entry in the U.S. and in other markets abroad. Id. ¶¶ 27-28. These ventures, as well as existing residential and business customers, will also benefit from the larger scope and scale that the new company will be able to achieve. Id. ¶¶ 27-31.

Procurement Savings. Although estimates of savings from increased volume discounts for equipment and services are by their nature inexact (depending as they do on outside vendors), these savings "are as desirable as any other economies" for purposes of competitive analysis.[47] The Commission has noted that procurement savings tend to lower marginal costs and "thereby counteract the merged firm's incentive to elevate price."[48] The Ameritech merger will generate such savings. Gilbert/Harris Aff. ¶ 54.

By unifying procurement for both their wireline and wireless operations, the companies will expand the scale of purchases and will gain increases in volume discounts from their suppliers. The companies estimate that, by combining their equipment purchases, they will realize future savings across all operations of approximately $381 million. Kaplan Aff. ¶ 20(a); see also Gilbert/Harris Aff. ¶ 45.

Similar savings should be realized when the two companies combine their purchases of wholesale interexchange services. Id. ¶ 26. SBC and Ameritech presently offer long distance service to their out-of-region wireless customers. SBC also sells landline interexchange services to its out-of-region wireless customers. Neither company currently has any significant interexchange facilities outside its own region; both rely on existing interexchange carriers for the wholesale provision of long distance transport. This reliance on established interexchange carriers will continue for the foreseeable future. Kahan Aff. ¶ 39. The interexchange market is characterized by substantial economies of scale that are reflected in a continuum of volume discount levels for wholesale services. Kaplan Aff. ¶ 26. By combining wholesale purchases, the new company will receive deeper discounts from other vendors. Id.

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[47] 5 Phillip E. Areeda & Donald F. Turner, Antitrust Law ¶ 1104a, at 11 (1980).

[48] BA/NYNEX at ¶ 169.

Adjusting for predicted growth, SBC projects that the merger will yield long distance savings and increased revenues of $300 million annually. By reducing the costs of long distance carriage, the company will be able to offer lower priced long distance services, making it a more effective competitor in that market.

Consolidation Efficiencies. Additional expense savings to be realized by the consolidation of the two companies' operations include:

- Marketing/New Product Development/Advertising: The efficiencies expected to be achieved from combining the separate marketing, new product development and advertising efforts of the two companies are expected to result in $85 million in savings by the year 2003. Kaplan Aff. ¶ 20(c).

- Business Development and Strategic Planning: As with research and development, there will be no need to duplicate present efforts in these areas. SBC and Ameritech expect to save $20 million annually by 2003 through the combination of their efforts. Id. ¶ 24.

- Real Estate: By consolidating and eliminating duplication, the combined company will need less space and expects to save $54 million from reduced real estate operations. Id. ¶ 20(d).

The projected savings, though estimates, are based on SBC's prior experience. SBC will adopt the same strategy it used in its merger with Pacific Telesis Group ("Telesis") and draw on the experience it gained from its successful integration of those two companies. Id. ¶ 24; see also Gilbert/Harris Aff. ¶¶ 56-60.

Upon consummation of the Telesis merger, SBC formed a team to examine virtually every layer of the two companies' operations and identify areas where the combined company could reduce costs. Kaplan Aff. ¶ 6. The team examined, among other things: (i) duplicative support functions; (ii) areas where economies of scale could reduce costs; (iii) duplicative expenditures on new ventures; and (iv) ways in which the best management practices of each company could be adopted and extended across the new company. Id. Having identified and quantified areas where savings could be attained, SBC incorporated the projected savings by reducing the budget of each affected department. Id. The process worked; the goals were met.

The merger of SBC and Telesis not only provided financial synergies by combining the best managers and best management techniques from the two companies, but also it has resulted in improved service, the introduction of new products, the improvement of networks and approximately 3,000 net new jobs in California since the merger closed. The increase in service was a result of merger-specific efficiencies – not higher prices. Local exchange service prices in California have not increased since the merger. Id. ¶ 93. For the second year in a row, Pacific Bell has been recognized as one of the top (ranked second) residential local telephone companies in customer satisfaction. Id. ¶ 96. Repair times at Pacific Bell have been reduced an average of 60 percent, from as much as four to seven days immediately following the merger to one to two days currently.[49] Id. ¶ 97. Repair and business office answering times have improved significantly.[50] Id. SBC has introduced a host of new services[51] and has announced the

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[49] Service installation times have been reduced by an average of 80 percent, down from as much as two-three weeks to about three-four days currently. Kahan Aff. ¶ 97. These improvements have occurred despite the disruption resulting from the extreme weather caused by El Nino and record demand for new telephone lines. Id.

[50] A California PUC goal required Pacific Bell to answer 80 percent of its repair and business office calls in 20 seconds or less. In 1996 (prior to the merger), Pacific Bell met this goal in its business office in only 1 of 12 months; in 1997, it met or exceeded the goal in 12 of the months. In 1996, Pacific Bell met the goal for repair service in 4 of the 12 months; in 1997 it reached it in 10 of 12 months. Pacific Bell now routinely exceeds CPUC-mandated response times for directory assistance and operator assisted calls. Kahan Aff. ¶ 97 and Attachments D-F.

[51] Pacific Bell has already introduced to consumers such services as Caller ID with name delivery, on-demand features (like pay-per-use three-way calling), and enhanced Internet services with lower ISDN rates. Pacific Bell also has introduced Managed Frame Relay

broadest rollout of DSL service anywhere in the U.S.[52] Id. ¶ 98.

Benefits to Employees and Communities. Jobs in California have increased and benefits to Telesis employees have improved since the Telesis merger. Id. ¶ 94. As of May 1998, Telesis and its affiliates created almost 3,000 net jobs or a 5.8 percent increase in jobs in California since the merger. Id. The employees' benefits have improved as well. Id. ¶ 95. For example, more than 15,000 California employees now receive stock options, up from a handful premerger. Id. The company also increased its matching contribution to the employee savings plan. Id.

Similarly, the merger of SBC and Ameritech will benefit local economies throughout the new SBC's service area. The strength and resources of the combined company will permit investment in an expanded range of new and enhanced services, which will result in increased local spending, the addition of new jobs and a resulting increase to the local tax base. Even though some duplicative positions will be eliminated, the merger will create new positions in the desirable communications services employment sector and will attract and retain highly skilled professional and technical personnel to the new SBC's service areas. But an overriding benefit to in-region ratepayers will be the ability of the new SBC to compete successfully to retain multi-location business customers, and thereby avoid losses of high volume business. Such losses can lead to disinvestment and/or rate increases in order to cover fixed costs. Gilbert/Harris Aff. ¶¶ 6-10.

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and web hosting services for business and has announced a rollout of business-oriented ADSL services. Id. ¶ 98.

[52] The company's plans call for initial DSL availability in some 200 California communities. Id. ¶ 98.

Benefits from Geographic Expansion. The expanded geographic scope of the new SBC will result in additional benefits for customers. For example, the new SBC will be able to link its customer service centers across the country and the globe in all time zones, providing more personnel to handle requests and resulting in shorter response times. Weller Aff. ¶ 28. Additionally, the added scale of these customer service centers will enhance the new SBC's ability to provide multilingual customer support. Id. ¶ 27. Features offered by each company will be offered across a unified system. Kahan Aff. ¶ 30. Consolidated mobile service support systems will reduce fraud without the need for "PIN" numbers and other unpopular security measures. Weller Aff. ¶ 29. Subscribers to the new SBC's Internet services will be able to avail themselves of local or toll-free access numbers in a wide area. Id.

Businesses will also be able to take advantage of the wider geographic scope of the post-merger company. For example, a company headquartered in one of the new SBC's states that has offices and plants in other states, and overseas, will be able to use a single point-of-contact for telecommunications services throughout its operations and receive consolidated billing. Weller Aff. ¶ 21. The new SBC, as a single-source telecommunications supplier for national and international businesses, will be able to provide managed services across widely separated locations, including effective advice and management of customer-premises equipment. A telecommunications consultant of the new SBC will be able to help business customers design national and international systems without the disadvantages of having to deal with independent vendors and multiple contacts for their various locations, including those in Europe, Asia, South America and South Africa.

Benefits from New Products and Services. The range of available consumer services and products will increase because of the economies of scale attainable by the new SBC. Weller Aff. ¶ 30; Schmalensee/Taylor Aff. ¶ 13; Gilbert/Harris Aff. ¶¶ 30, 50. Services that currently go undeveloped because of high start-up costs will roll out to customers because the larger number of potential users for such services will support higher research, development and up-front costs. Weller Aff. ¶ 30; Gilbert/Harris Aff. ¶¶ 30, 50; Schmalensee/Taylor Aff. ¶ 20. Furthermore, new services will move through research and development and into customers' homes much faster and more economically. Weller Aff. ¶ 30; Schmalensee/Taylor Aff. ¶ 19; Gilbert/Harris Aff. ¶¶ 29-38. The new services will expand the options available for obtaining packages of services by customers of the new SBC, who will enjoy the increased convenience of one-stop communications services shopping and integrated billing.[53] Weller Aff. ¶ 30.

The rollout of new services can be time-consuming and involve considerable up-front costs.[54] Before new services can be fully deployed, the hardware and software must be tested. The service itself is then tested with a small group of consumers. Lessons learned from these two trials are then incorporated into a full-scale rollout. These steps can take a great deal of time and money, and much of this effort is duplicated from firm to firm. Weller Aff. ¶ 30; Schmalensee/Taylor Aff. ¶ 19; Gilbert/Harris Aff. ¶¶ 30, 50.

[53] William J. Holstein et al., Bill Gates's Legal Problems Get Bundled, U.S. News & World Reports, Dec. 22, 1997, at 32 (quoting Asst. Atty. Gen. Joel Klein).

[54] See generally J. Grubman, Paine Webber, Reevaluation of the Local Telephone Industry - Industry Report, Investext Rpt. No. 944535, at *8-*9, *11 (Dec. 28, 1989). See also J.D. Gross et al., Donaldson, Lufkin & Jenrette Securities Corp., Cincinnati Bell – Company Report, Investext Rpt. No. 820997, at *5 (Aug. 26, 1988) ("Because much of the cost associated with providing [vertical] services is fixed, as volumes for all of these services increase, they will become even more profitable.").

Both SBC and Ameritech, for example, plan a widespread deployment of DSL technology. This requires a great deal of advance planning and testing. At the end of 1997, SBC had 200 employees dedicated to testing modems to be used in its trials.[55] SBC has a subsidiary, Technology Resources, Inc. ("TRI"), that provides technical consulting for all of SBC's domestic and international operations. Kaplan Aff. ¶ 20(c). TRI was instrumental in finding solutions to some of the technical problems that SBC encountered while testing its DSL product. Id. Ameritech has no subsidiary equivalent to TRI.

After equipment is tested, a new service like DSL is then typically offered to a small group of consumers. This trial is an absolutely essential part of troubleshooting problems and making sure they never become systemwide crises. SBC began testing its DSL service in Houston in mid-1996[56] and expanded its trial to include Austin and San Francisco in December 1997.[57] In the spring of 1998, nearly two years after its first market test, SBC began a statewide rollout in California.[58] Ameritech began testing its DSL service in October 1996. Ameritech launched its DSL service in Ann Arbor in late 1997, expanded the service to Wheaton, Illinois and Royal Oak, Michigan, and has stated broad expansion goals for the service (i.e., to pass 70 percent of homes). Weller Aff. ¶ 30. Here again, the two companies are currently learning the same costly lessons and

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[55] See Tom Abate, 2 Fast-Modem Makers Decide To Get Married, S.F. Chron., Oct. 2, 1997, at D1.

[56] See Leslie Gornstein, Quick New TI Chip Possible Boon to the Internet, Fort Worth Star-Telegram, Feb. 4, 1997, at 1.

[57] See SBC Unveils Two New DSL Test Markets, ISDN News, Dec. 2, 1997, available at 1997 WL 9052883.

[58] See SBC Communications Announces Broad ADSL Deployment Across California, Business Wire, May 27, 1998, at 14:14:00 (available on Westlaw).

solving very similar problems, at duplicative expense. Combining such efforts will spread development costs and risks across a broader base, sharply reducing unit costs and accelerating the delivery of new services to market. Gilbert/Harris Aff. ¶¶ 35-38.

Implementing "Best Practices". This merger, and SBC's merger with SNET, will permit the new SBC to take advantage of the best ideas and practices developed through years of experience by the telephone and wireless subsidiaries of four different companies – SBC, Ameritech, Telesis and SNET – in addition to ideas developed through working with numerous foreign carriers. Kaplan Aff. ¶ 6; Weller Aff. ¶ 25; Schmalensee/Taylor Aff. ¶ 13; Gilbert/Harris Aff. ¶ 27. Ameritech has already learned that this selection of "best practices" techniques can result in strong advantages. Weller Aff. ¶ 14; Rivers Aff. ¶ 18. For example, several years ago Ameritech centralized the management of many carrier operations that previously had been operated on a state-by-state basis. Weller Aff. ¶ 25; Rivers Aff. ¶ 19. The shared ideas and systems resulted in an improvement in customer service response time, enhanced network reliability. Weller Aff. ¶ 25. This effect will be magnified through the merger. The resulting cost savings can be reinvested in the development of new products and services. Weller Aff. ¶ 24; Gilbert/Harris Aff. ¶ 41.

Although carriers generally try to guard their operating practices, the ability to compare such practices and evaluate the benefits and trade-offs as a result of consolidation is of great value to the combination of Ameritech and SBC. Rivers Aff. ¶ 25; Schmalensee/Taylor Aff. ¶ 13. The new SBC can unlock benefits for other segments of the carrier's businesses beyond the local exchange. For example, in addition to the benefits gained by the over 50 million local exchange customers, the new SBC's millions of wireless subscribers, one million directory advertisers, 30 million customers and three million businesses that receive directories all stand to benefit from the sharing of these best practices.[59] Gilbert/Harris Aff. ¶¶ 41, 47.

SBC, for example, has been very effective in developing and marketing new vertical services.[60] Kaplan Aff. ¶¶ 8-9; Gilbert/Harris Aff. ¶ 53. For example, SBC provides, on average, some 2.45 vertical services per access line, nearly double Ameritech's rate. Kaplan Aff. ¶ 8. SBC's penetration rate for Caller ID (absent Pacific Bell) was 47 percent compared to Ameritech's 25 percent in 1997. According to a recent analyst report, SBC leads Ameritech 14 percent to 9 percent in voice mail penetration rates, 49 percent to 43 percent in call waiting penetration rates, and 23 percent to 17 percent in second residential line penetration rates.[61]

Ameritech's customers will benefit from SBC's expertise in these vertical services, just as SBC's customers will profit from the lessons Ameritech derived from its centralization process. Rivers Aff. ¶ 19. SBC's customers will also benefit from Ameritech's efficiency in the provision of local service. Ameritech, for example, currently has fewer employees per access line than does SBC. Rivers Aff. ¶ 22.

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[59] See SBC Investor Briefing (No. 200), SBC Communications and Ameritech to Merge (SBC May 11, 1998).

[60] See R.B. Wilkes, Brown Brothers Harriman & Co., Telecommunications Services – Industry Report, Investext Rpt. No. 2640386, at *43 (Nov. 28, 1997) (stating that "SBC has had considerable success in offering vertical services to its customer base."); see also D. Reingold et al., Merrill Lynch Capital Markets, SBC Communications, Inc. - Company Report, Investext Rpt. No. 2617904, at *2 (Jan. 6, 1998) ("SBC's expertise in vertical services should help create [SBC/SNET] revenue synergies.").

[61] See D. Reingold et al., Merrill Lynch Capital Markets, RBOC's & GTE: Telecom Services – Industry Report, Investext Rpt. No. 3309420, at Table 10 (Nov. 17, 1997).

The companies have already demonstrated one example of the advantages of best practices selection. Because of its national reach, AT&T has the opportunity to compare the services provided by all major telephone companies. AT&T preferred the methods used by SBC in provisioning high-capacity service to those used by Ameritech. At AT&T's suggestion, Ameritech has adopted SBC's methods for provisioning high-capacity telecommunications circuits used for data, video and voice services. Business customers, universities, CLECs and wireless carriers have benefited from these improved practices, which have reduced cycle time and improved quality service. Rivers Aff. ¶ 21. In similar fashion, following the merger, the new SBC will be able to select best products and services from across the four companies, providing residential customers with the same kinds of advantages currently available only to the largest of national customers. The reciprocal adoption of best practices is far more effective within a company than between independent companies. Schmalensee/Taylor Aff. ¶ 13.

As another example, Ameritech plans to provide its field technicians with hand-held computers that are expected to improve their productivity by 5-10 percent. Rivers Aff. ¶ 10. SBC, on the other hand, uses a global positioning service to route field personnel most efficiently to locations where they are needed. The convergence of these two technologies will provide a 21st century response to the continuing problems of maintaining and expanding communications networks, thus even further decreasing response time and improving customer satisfaction.

Customer service strategies that have proved successful in one operating company will quickly be implemented across the entire country. Furthermore, the scale of the combined companies justifies the investments that will be required to implement the "best practices" customer service programs as well as the development of new programs arising from these activities.

E. The Merger Is Necessary To Enable SBC and Ameritech To Implement Their New Strategy

Absent the merger, neither SBC nor Ameritech had plans for facilities-based entry into out-of-region local markets. Kahan Aff. ¶¶ 91; Weller Aff. ¶ 31. Each had scaled back or abandoned various out-of-region proposals because none provided a compelling business rationale commensurate with the risks and costs, and because none offered prospects as attractive as the companies had seen in their wireless, international and other businesses.

SBC and Ameritech, however, have a particular reason – and, together, they would have the ability - to expand their out-of-region ventures, because they face unprecedented new challenges in the profitable core of their operations, in-region service to business customers. Kahan Aff. ¶ 21; Carlton Aff. ¶ 12; Weller Aff. ¶ 35. In the first quarter of 1998, CLECs as a group, for the first time, added more business lines – especially the high-capacity lines, where both SBC and Ameritech have seen tremendous losses of businesses – than the BOCs.[62] Carlton Aff. ¶ 12. Foreign carriers with enormous resources – NTT, Deutsche Telekom, France Telecom and British Telecom – will soon be numbered among those vying to serve the high-growth, high-profit telecommunications market of multinational corporations. See Table 14 at the "Tables"

[62] One analyst noted: it was "a startling event to have the crossover occur so soon." Saloman Smith Barney, CLECs Surpass Bells in Net Business Line Additions for First Time (May 6, 1998) (Saloman Smith Barney 1998). To put this in perspective, the non-AT&T long distance competitors did not have more incremental minutes than AT&T until 1986, a full 10 years after MCI carried its first switched long distance minute. Id. At this pace, "the 50 percent loss of market share that AT&T saw from 1986 through 1996 could be replicated in the local market in a much quicker time period." Id.

attachment; Schmalensee/Taylor Aff. ¶ 22. Each has already established a beachhead in the U.S.[63] ILECs are also rapidly losing share in a second, traditionally profitable market, the market for intraLATA toll services.[64] At the same time, SBC and Ameritech face unprecedented new obligations to implement entry-facilitating changes mandated by the 1996 Act. The companies have spent over $3 billion so far on this effort. Carter Aff. ¶ 7; Appenzeller Aff. ¶ 10. The changes occurring at a rapid pace in the industry, and the growing capabilities of competitors, have forced SBC and Ameritech to consider anew ways that they can effectively compete outside their regions. Gilbert/Harris Aff. ¶¶ 5-26.

It was the considered business judgment of both SBC and Ameritech that the two companies had to make a choice. They could stick to their existing businesses and regions and try to hang on in the face of the inroads of new competitors, or they could combine forces to become one of the small number of companies with the size, scope and commitment to compete everywhere. The top managers of the two companies did not

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[63] Nippon Telegraph and Telephone Corp. recently made a major commitment to a CLEC in the United States, investing $100 million in Teligent, which is constructing digital wireless network that ultimately will reach more than 700 cities and towns across the U.S. See Teligent Press Release, Teligent Announces $100 Million Strategic Investment by NIT (Sept. 30, 1997), available at <http://www.teligentinc.com/news/rel100.htm>. Deutsche Telekom and France Telecom, of course, have made substantial investments in Sprint and formed the Global One alliance. BT's small presence in the U.S. was augmented by its acquisition of an interest in MCI and the formation of the Concert alliance. See Sprint, Deutsche Telecom and France Telecom Investment in Sprint Completed (visited July 21, 1998) <http://www.sprint.com/sprint/press/releases/9604/9604260249.html>; Sprint, Global One Obtains Final European Union Approval (visited July 21, 1998) <http://www.sprint.com/sprint/press/releases/9607/9607170276.html>.While its relationship with MCI is unwinding, it has shown a clear interest in being a major global player. See Hilary Clarke, BT to Woo City Over Europe, The Independent (London), May 3, 1998, available at 1998 WL 13648693; Amanda Hall, BT Put on Hold Following the Collapse of the Merger with MCI, Sunday Telegraph, Nov. 16, 1997, at 6.

[64] See D. M. Hollingsworth, George K. Baum & Company, Competitive Local Exchange Carriers – Industry Report, Investext Rpt No. 1940508, at *6 (June 25, 1997) (stating that ILECs have been steadily losing revenues and market share in the intraLATA toll business).

believe there was a middle ground between these two approaches that was viable for them in the long term. SBC and Ameritech have opted to grow and compete. The new SBC is committed to enter new markets aggressively, offering service from coast to coast, and beyond. Kahan Aff. ¶¶ 10-15; Weller Aff. ¶ 11.

Neither SBC nor Ameritech currently has the scale, scope, resources, management and technical ability to implement the proposed national and global strategy on its own. SBC, the larger of the two companies, currently provides local exchange service in seven states.[65] Those states include only 11 of the nation's top 50 markets and generate only 18 percent of U.S. telecommunications revenues. The 30 out-of-region markets that the new SBC will enter stretch across 24 states and have a population of 70 million people. Viewed in the perspective of the considerably larger market that spans the Americas, Europe, Asia and Africa, SBC's existing base of operations is smaller still.

Neither SBC nor Ameritech could, on its own, take on the considerable financial burden of entering both national and global markets in the way that they have proposed. Kahan Aff. ¶¶ 79-80; Weller Aff. ¶ 36. The new strategy that the companies intend to execute together projects negative cash and earnings flow on a cumulative basis until almost a decade from now. Kahan Aff. ¶ 80. Established companies like SBC and Ameritech are valued by financial markets based on their earnings performance, and neither alone could suffer the earnings dilution that would accompany implementation of this plan. Id. ¶¶ 79-80; Weller Aff. ¶ 34.

Nor does it make business sense for either SBC or Ameritech on its own to attempt to go national on a more incremental basis, entering fewer markets more slowly.

[65] This does not include Connecticut, which SBC will serve should its merger with SNET be approved.

The success of the new strategy pivots on economies of scale and scope and a rapid national and global reach. In particular, for the new national and global strategy to work, SBC must be in the major markets in which its large customers need service, and it must be there promptly. Kahan Aff. ¶ 54. Moreover, SBC believes that gradual, incremental expansion will not permit it to respond to requests for proposals from multilocation customers or compete with the carriers that have the scale and scope to respond to those needs. Id. ¶ 13; Carlton Aff. ¶ 22. Starting from a smaller base would increase the cost and risk of the strategy prohibitively. It also would increase the number of markets SBC alone would have to enter, while reducing the base of customers it could expect to follow into new markets. Kahan Aff. ¶ 76; Carlton Aff. ¶ 24-30. Any alternative strategy would at best delay, or more likely preclude, the onset of significant new competition by SBC for both business and residential consumers in major and second tier markets. Kahan ¶ 51; Carlton Aff. ¶¶ 43-44.

SBC and Ameritech strongly believe that only the combined company will have the financial resources, customer base, managerial and employee talent, economies of scale and scope and business commitment most effectively to offer integrated telecommunications services (local, long distance, high-speed data and other services) to consumers nationwide and beyond, for the benefit of both their customers and shareholders.

Resources. Entering 30 new major markets in the U.S. and 14 foreign cities essentially simultaneously – by building and operating new facilities and marketing new packages of service to large, medium-sized and small businesses and residential consumers – presents daunting management challenges. Carlton Aff. ¶ 31. Neither SBC nor Ameritech alone has the management depth to implement such a strategy. Kahan Aff. ¶¶ 77-78; Weller Aff. ¶ 33. In order to do so, each would have to hire and train additional employees, an especially difficult task during a time of low unemployment and high demand for personnel with telecommunications experience. Kahan Aff. ¶ 78. With the merger and the efficiencies it will entail, however, the new SBC will have a much larger pool of experienced personnel upon which to draw. Id.; Carlton Aff. ¶¶ 31-35. The pool of skilled and experienced personnel the combined company can field as one will facilitate implementation of the strategy. Carlton Aff. ¶ 35.

The new SBC also will have the capital it needs to execute its plan. Entering all of these new markets will be costly and the merger allows these costs, and the attendant earnings impact, to be spread over the much larger customer and shareholder base of the combined company. Kahan Aff. ¶¶ 79-81.[66] Based on current results, the new SBC would have annual revenues of \$43 billion and net income of \$4 billion. While it will be a large company, it would still have fewer customers, generate less revenue and have lower operating cash flow than AT&T/TCG (\$51 billion/\$4.6 billion, even before adding the revenues of TCI) and it would be comparable in size to other major carriers.[67] In the

[66] As Commissioner Ness has recognized, there are "huge investment requirements for expansion of telecommunications infrastructure." See Susan Ness, Global Competition in Telecommunications, Remarks before the Women's Foreign Policy Group (Jan. 23, 1997), available at <http://www.fcc.gov/speeches/ness/spsn701.html>.

[67] Comparative figures for other carriers are as follows: WorldCom/MCI (\$27 billion/\$500 million); Sprint (\$15 billion/\$1 billion); Bell Atlantic (\$30 billion/\$2.5 billion); BellSouth (\$21 billion/\$3.3 billion); GTE (\$23 billion/\$2.8 billion); Nippon Telephone (\$77 billion/\$2.4 billion); Deutsche Telekcom (\$39 billion/\$2 billion); and France Telecom (\$27 billion/\$2.5 billion). See The Fortune Global 500, Fortune, Aug. 3, 1998, at F15; MCI, S.E.C. Form 10-K (1997); WorldCom, S.E.C. Form 10-K (1997).

global arena, the new SBC's revenues will leave it substantially smaller than NTT and two of the four existing global alliances.[68] See Table 14 at the "Tables" attachment.

Economies of Scale and Scope. Network industries are characterized by powerful economies of scale and scope, which are critical factors in purchasing and deploying new technologies and services.[69] Large buyers of equipment are able to negotiate large discounts with hardware and software vendors, such as Nortel, Lucent, Siemens and Alcatel. See Schmalensee/Taylor Aff. ¶¶ 11-12. Purchases of bulk services, like wholesale interexchange transport or Internet backbone access, also become much less expensive with scale. Id. ¶ 13. Scale also eliminates many duplicative general and administrative costs, providing selling and maintenance efficiencies.[70] As discussed above, SBC and Ameritech anticipate efficiencies in these and other areas. See Gilbert/Harris Aff. ¶¶ 39-47.

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[68] WorldPartners is an alliance among 17 foreign carriers and AT&T; GlobalOne is an alliance among France Telecom, Deutsche Telekom and Sprint; Unisource is an alliance among incumbents in the Netherlands, Sweden and Switzerland. Cable & Wireless Inc., a U.K. holding company with ownership interests in over 25 foreign PTTs, also has ownership interests in at least 10 other foreign long distance and wireless carriers. See Table 17 at the "Tables" attachment.

[69] The FCC has recognized that firms that can take advantage of scale economies by spreading development costs over a larger customer base are more likely to invest in infrastructure upgrades. See, e.g., In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., Order, 10 FCC Rcd. 13368, ¶ 46 (1995) ("[T]he alleged efficiencies will improve service to customers by promoting technological innovation and new or improved service offerings for consumers."); see also In re Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Services, Report, 5 FCC Rcd. 4962, ¶ 71 (1990) ("[I]ncreased concentration [in the cable industry] has provided economies of scale and fostered program investment").

[70] See M.J. Renegar et al., ABN AMRO Chicago Corp., CLEC Fourth Quarter and 1998 M&A Outlook – Industry Report, Investext Rpt. No. 2617676, at *1 (Dec. 30, 1997); B. Garrahan et al., Lehman Brothers, Inc., 1998: The Year of Telecom Consolidation – Industry Report, Investext Rpt. No. 3312761, at *14 (Nov. 25, 1997) (estimating that horizontal mergers can generate up to a 10-15 percent reduction in combined sales, general and administrative (SG&A) expenses).

In addition, large providers of service can distribute the costs of funding the development of new technology over an extended base of operations. Kaplan Aff. ¶ 20(c); Schmalensee/Taylor Aff. ¶ 13. Size also diminishes the risks of developing new services. Kaplan Aff. ¶ 20(c); Schmalensee/Taylor Aff. ¶ 19.

Geographic scale and scope are equally important to national and multinational customers. Because of their market reach and the breadth of service they can provide, large companies like AT&T/TCG/TCI and WorldCom/MCI/IMFS/Brooks/UUNet can bid to serve a large customer's telecom needs around the world. Schmalensee/Taylor Aff. ¶ 14. The new SBC will have the economies of scope and scale essential to permit it to develop new services and market them nationwide, at competitive prices. Kahan Aff. ¶ 81.

* * *

The structure of the telecommunications industry cannot be set in stone. Congress recognized this in enacting the 1996 Act, and the Commission has recognized it in approving major mergers as in the public interest. Limiting the RBOCs to the regions to which they were assigned in the divestiture decree makes no sense in the dynamic environment of today's global industry.

The 1984 decision to divide the old Bell System into eight parts was made by AT&T and reflected little more than Bell's own traditional practice of dividing the nation up into local operating companies and regional marketing territories.[71] The divestiture decree itself

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[71] As summarized by the United States Telecommunications Suppliers Association in 1983, "Western Electric's existing 'Bell Sales' operation performs a wide variety of procurement related functions for the BOCs through a highly integrated network of facilities, organized into seven regions which are virtually identical to the areas covered by AT&T's proposed 'regional holding companies." See Comments of United States Telecommunications Suppliers Association Concerning AT&T's Proposed Plan of

did not call for seven Regional Holding Companies;[72] both Assistant Attorney General William Baxter and AT&T's then-general counsel testified before Congress that the decree would not have precluded AT&T to spin off all of the BOCs into a single holding company.[73] No public official expressed any strongly held views regarding how many or few Regional Bells there would be, since no one anticipated any competition by, among or (least of all) against Bells.[74] The decree assumed that the local exchange was a natural economic monopoly and resolutely quarantined the presumptive monopolists.[75]

Subsequent developments established that the natural monopoly assumption was wrong and counterproductive. Thus, the 1996 Act assumes the opposite: competition is not only possible but inevitable, and the quarantines are to be phased out to the extent (as with out-of-region competition) they were not eliminated immediately in 1996.

Reorganization at 7-8, United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. Feb. 14, 1983).

[72] See United States v. AT&T, 552 F. Supp. 131, 227 (D.C. Cir. 1982) (stating to the contrary that "nothing in this decree shall require or prohibit the consolidation of the ownership of the BOCs into any particular number of entities").

[73] See United States v. Western Elec. Co., 797 F.2d 1082, 1091 (D.C. Cir. 1986) (citing AT&T Proposed Settlement: Hearings Before the Senate Committee on Commerce, Science and Transportation, 97th Cong., 2d Sess. 73 (1982) (testimony of William F. Baxter)), aff'g in part, dismissing in part, 627 F. Supp. 1090 (D.D.C. 1986); see also Department of Justice Oversight of the United States versus American Telephone and Telegraph Lawsuit: Hearings Before the Senate Committee on the Judiciary, 97th Cong. 58, 141-142 (1982) (prepared statement of William F. Baxter; testimony of Howard J. Trienens); United States v. AT&T, 552 F. Supp. at 142 n.41 ("The number of new Operating Companies is not specified in the settlement proposal."); United States v. AT&T, 552 F. Supp. at 227.

[74] The Decree expressly prohibited the Bell Companies from competing against AT&T in the long distance market, or indeed against anyone in any other market. See United States v. AT&T, 552 F. Supp. at 227 ("no BOC shall . . . provide interexchange telecommunications services"); United States v. Western Elec. Co., 627 F. Supp. at 1108 (D.D.C.) 1986 ("The conclusion that the local companies may not engage in exchange telecommunications outside their own areas is also supported by policy underlying the decree"), aff'd in part, dismissed in part, 797 F.2d 1082 (D.C. Cir. 1986).

[75] See United States v. AT&T, 552 F. Supp. at 227-28.

Exclusive franchises have been eliminated, and rapid technological advance is propelling fundamental change in the price, quality and variety of telecommunications services. Gilbert/Harris Aff. ¶¶ 5-26.The Act further anticipates that telephone, cable and data services will converge, and includes a range of initiatives to facilitate that process. Id. ¶¶ 11-21. There is no reason that the old industry structure, erected on the pillars of exclusive local franchise, regulated monopoly and analog technology, should endure in the new environment. Indeed, the regional structure of the RBOCs is the result of the AT&T settlement and Consent Decree, not the result of current or historic patterns of economic efficiency. See Carlton Aff. ¶ 14. The Commission, likewise, has recognized that the number of Bell Companies is not immutable.[76] The proposed merger of SBC and Ameritech acknowledges and embraces these changes, and offers the prospect of significant new competition at the local, national and global levels.

III. THIS MERGER WILL NOT RESULT IN ANY SIGNIFICANT DIMINUTION IN COMPETITION

The merger of SBC and Ameritech offers tremendous benefits to consumers of telecommunications services and to the U.S. as a whole, as described in the preceding section. Moreover, the merger does not pose any harm to competition.

With very limited exceptions, SBC and Ameritech provide telecommunications services in geographically distinct areas. The principal exception is the overlap of their

[76] See In re Applications of Pacific Telesis Group and SBC Communications Inc., Memorandum Opinion and Order, 12 FCC Rcd. 2624, ¶ 32 (1997) ("SBC/Telesis") ("[N]othing in the Communications Act or the antitrust laws requires ~~the present~~ number of RBOCs, or any particular number of them").

cellular systems in Chicago and St. Louis (and certain surrounding areas).[77] Consistent with the Commission's rules, 47 C.F.R. §§ 20.6 & 22.942, the Applicants will transfer one of their overlapping cellular licenses in each area to a third party, thereby resolving this issue. The Applicants are actively negotiating with a number of parties and will promptly advise the Commission as soon as a definitive agreement to transfer these licenses is reached.

As discussed below, there is also no reason for concern about the elimination of potential competition between SBC and Ameritech in any local market. For one thing, there is substantial actual competition in both markets, as we discuss in greater detail in Section IV.C.1. Furthermore, neither SBC nor Ameritech is a significant potential competitor of the other. Long before consideration of this merger, SBC had affirmatively rejected trying to use its cellular assets as a base for providing local exchange service in Ameritech's Chicago service area. Ameritech's sole plans to provide local exchange service in any SBC service area were limited to: (a) reselling SWBT service to Ameritech's residential cellular subscribers in St. Louis and (b) reselling local service out-of-region to Ameritech's largest in-region customers (a service for which Ameritech has only one customer). Ameritech had no plans to offer facilities-based competition in

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[77] These systems consist of certain MSAs and RSAs operated as single systems, headquartered in Chicago and St. Louis.

The complete list of overlapping cellular license areas is as follows: Chicago, IL MSA; St. Louis, MO-IL MSA; Gary-Hammond-East Chicago, IN MSA; Springfield, IL MSA, Champaign-Urbana-Rantoul, IL MSA; Bloomington-Normal, IL MSA; Decatur, IL MSA; Illinois RSA 2-B3; Illinois RSA 5-B2; Illinois RSA 6; Missouri RSA 8; Missouri RSA 12; Missouri RSA 18; and Missouri RSA 19. SBC and Ameritech have clustered these license areas into their Chicago and St. Louis systems. In addition, while SBC has no ownership interest, it does manage a portion of the cellular system in Missouri RSA 10, where part of Ameritech's competing system is located.

any SBC service area and is not a significant potential competitor of SBC, much less one of a few significant potential competitors. Put another way, neither SBC nor Ameritech is a "most significant market participant" in any market where the other is the incumbent LEC.

A. The Merger Will Not Eliminate Any Substantial Actual Competition

The merger will not eliminate or substantially lessen actual competition in any relevant market. The only significant actual competition between the Applicants today is in the provision of cellular service in Chicago, St. Louis and certain surrounding areas. As discussed below, and as required by the Commission's Rules, Applicants will cure those overlaps by divesting overlapping cellular licenses. There is also de minimis, isolated "competition" between the Applicants in providing local exchange service to large business customers and in long distance service outside their respective regions. These overlaps are, however, trivial and do not give rise to any significant competitive concerns.

1. Wireless Services

The Commission has previously defined interconnected mobile phone service, including cellular, broadband PCS and interconnected, trunked SMR services, as a relevant market for competitive analysis.[78] As noted above, SBC and Ameritech hold interests in certain overlapping cellular licenses in the Chicago and St. Louis areas. In

[78] See In re Application of Pittencrieff Communications, Inc. and Nextel Communications, Inc., Memorandum Opinion and Order, 13 FCC Rcd. 8935, ¶ 24 (1997); In re Applications of Pacificorp Holdings, Inc. and Century Telephone Enterprises, Inc., Memorandum Opinion and Order, 13 FCC Rcd. 8891, ¶ 28 (1997). See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report, FCC 98-91, at 13-14 (June 11, 1998) ("Third CMRS Competition Report").

each such area and in all their wireless markets, SBC and Ameritech compete with other providers of cellular, PCS, SMR and other wireless services.[79] See Section IV.C.2, below.

The competitive analysis of wireless overlaps can be abbreviated because SBC and Ameritech will comply with the Commission's rules prohibiting anyone that owns or controls a cellular license from acquiring an ownership interest in another licensee in the same cellular geographic service area. 47 C.F.R. § 22.942. The Commission's spectrum aggregation rules also prohibit a commercial mobile radio service ("CMRS") licensee from having an attributable interest in a total of more than 45 MHz of licensed CMRS spectrum with significant overlap in any geographic area. 47 C.F.R. § 20.6. Applicants will comply with the Commission's rules prior to consummation of the transfer of control of such licenses from Ameritech to SBC as contemplated by this Application.

Indeed, not only will the merger of SBC and Ameritech not eliminate any competition, it will strengthen competition and benefit consumers of wireless service by allowing the merged company to provide wider calling scopes, more consistent features and other consumer benefits. See Section IV.C.2, below.

2. Local Exchange Service to Large Business Customers

Ameritech and SBC compete to a de minimis extent for the provision of local exchange service to large business customers. Ameritech provides resold local exchange service outside its five-state region to only one large business customer. It currently serves, on a resale basis, 398 access lines in California, 118 lines in New York, and 86

[79] Paging markets are highly competitive with many providers, switching providers is easy and inexpensive, and there are no barriers to entry. See Third CMRS Competition Report at 51. Accordingly, there are no competitive concerns in any paging market.

lines in Texas for this customer. Weller Aff. ¶ 32. This is the product of a pilot project to expand relationships with existing, large in-region customers. Id. Unlike the National-Local Strategy that SBC intends to implement as a result of the merger, Ameritech's plan was aimed at reselling local service only to large business customers and was not designed to be the springboard for a broad-based entry into out-of-region local exchange service. There was limited customer interest in the service and it has not been expanded, because its financial performance was not meeting expectations and the expected margins did not justify a further roll-out. Id.

Large business and government customers enjoy the largest number of options for their local exchange and other telecommunications needs.[80] See Section IV.C.1. These are the customers most avidly pursued by CLECs. See Carlton Aff. ¶ 36. Accordingly, any competitive overlap between Applicants in the local exchange business is de minimis and not a cause for competitive concern. See Schmalensee/Taylor Aff. ¶ 28.

3. Long Distance Service

Neither SBC nor Ameritech is currently permitted to provide interLATA service in its region, except for incidental service, such as that provided to cellular customers. Each has begun to provide long distance service to a small degree outside its region, and

[80] The Commission implicitly acknowledged this in focusing its attention in BA/NYNEX on residential and small business customers. BA/NYNEX at ¶ 53.

there is thus some competitive overlap between them.[81] This overlap is de minimis, however.

The relevant geographic market for long distance service is nationwide.[82] Long distance networks are nationwide in scope, interexchange carriers market their services to customers across the nation and rates are averaged on a national basis. The business is dominated by the major interexchange carriers, AT&T, MCI/WorldCom and Sprint, which share over 80 percent of the market.[83] In contrast, SBC and Ameritech are two very small competitors among hundreds of resellers. As Drs. Schmalensee and Taylor conclude, the effect of the merger on competition between them is too small to trigger any competitive concerns. Schmalensee/Taylor Aff. ¶ 29.

This conclusion would be unaffected if the product market were limited to specific types of customers or if the geographic market were limited to various states,

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[81] To the extent that SBC or Ameritech is providing landline long distance service in the other's region, it will make alternative arrangements for these customers to receive landline long distance service after the merger, if necessary (as, for example, in the case of SBC's cellular customers in Illinois and Indiana, if SBC's Chicago cellular system is not divested as part of SBC's compliance with the Commission's rules regarding ownership of overlapping cellular licenses).

[82] See, e.g., In re Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Second Report and Order, 12 FCC Rcd. 15756, ¶ 67 (1997) ("LEC Interexchange Order"). In BA/NYNEX, the Commission considered LATA or metropolitan-area based markets to be relevant geographic markets for long distance service, although this does not appear to have been central to the competitive analysis. Given that the only barriers to expansion by a long distance carrier are those imposed uniquely on the RBOCs by section 271 of the 1996 Act, defining the relevant geographic market by LATA seems too narrow. In any event, as discussed below, this will not affect the result in this case.

[83] See FCC Common Carrier Bureau, Long Distance Market Shares: First Quarter 1998 table 3.2 (June 1998), available at <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-state-link/ixc.html#marketshares> (noting market share in revenues reported to shareholders).

metropolitan areas or LATAs.[84] There is no plausible cause for concern about anticompetitive effects resulting from the merger in any long distance market.[85] To the contrary, as discussed in Section IV.C.4, below, the merger will promote long distance competition.

B. The Merger Will Not Eliminate Any Substantial Potential Competition

In its decision approving SBC's merger with Pacific Telesis, the Commission set out a framework for analyzing mergers between large local exchange carriers that focused on potential competition analysis.[86] Subsequently, the Commission refined that analysis in BA/NYNEX to take account of dynamic factors affecting the industry. In that decision, the Commission focused on identifying "the most significant market participants" as central to its analysis.[87] In this case, the merger of SBC and Ameritech will not eliminate substantial potential competition between them, nor is SBC or Ameritech a "most significant market participant" in any market in which the other is the incumbent LEC.

[84] SNET's affiliate, SNET America, Inc., provides long distance service to customers in Connecticut, but there is no measurable overlap there with either Ameritech or SBC.

[85] Subsidiaries of SBC and Ameritech also issue calling cards to their customers which can be used in virtually all states where these customers travel. Neither company, however, markets, or had any plans to market, service in the other's territory. Thus, the provision of originating long distance service by either company in the other's territory is the fortuitous consequence of the use of a calling card by a travelling customer. This "competition" is obviously de minimis. See Schmalensee/Taylor Aff. ¶ 29.

[86] SBC/Telesis at ¶¶ 17-18.

[87] BA/NYNEX at ¶¶ 7, 61-62.

1. Relevant Product Market

The Commission has defined a relevant product market as "a service or group of services for which there are no close demand substitutes."[88] In BA/NYNEX, the Commission defined three relevant product markets for analysis: local exchange and exchange access service ("local service"); long distance (i.e., interLATA) service; and local exchange and exchange access service bundled with long distance service ("bundled services"). See BA/NYNEX ¶ 50. We will thus discuss the effects in those proposed markets. There are no other markets in which there are any plausible competitive concerns.

In addition, the Commission in BA/NYNEX assessed the effects of the merger in three separate customer segments that were grouped as having "similar patterns of demand": residential customers and small businesses (the "mass market"); medium-sized businesses; and large business/government users. Id. ¶ 53. We will address the potential effects of the merger in each segment as the Commission did in BA/NYNEX.

2. Relevant Geographic Market

The Commission has defined a relevant geographic market as aggregating "those consumers with similar choices regarding a particular good or service in the same geographical area." Id. ¶ 54. In BA/NYNEX, the Commission defined a LATA – in that case, LATA 132, essentially covering NYNEX's New York Metropolitan Calling Area – as a relevant geographic market for local exchange, long distance and bundled services. Id. ¶ 55. Following that approach, we focus our analysis on the only two LATAs in

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[88] BA/NYNEX at ¶ 50 (citing LEC Interexchange Order at ¶ 27); cf. Dept. of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines (issued April 2, 1992) ("1992 Horizontal Merger Guidelines") at § 1.0-1.1.

which there could conceivably be potential competition concerns, the St. Louis and Chicago LATAs. These are the only areas in which one of the merging parties is the incumbent LEC while the other may have given any consideration to entry into local services.[89] See Schmalensee/Taylor Aff. ¶ 27. As discussed below, even in those two areas, the merger will not substantially lessen competition.

The Commission in BA/NYNEX also defined an alternative geographic market comprising the New York metropolitan area, including northern New Jersey, based on the finding that media advertising in New York reached consumers in Bell Atlantic's northern New Jersey service area. Id. ¶ 56. Varying the market definition did not affect the analysis in BA/NYNEX, nor would it in this case if the relevant geographic markets were defined as the Chicago and St. Louis metropolitan areas rather than the corresponding LATAs, as discussed below.

3. Market Participants

In BA/NYNEX, the Commission defined the universe of participants in the relevant market to include actual competitors – those firms currently competing in the relevant market and geographic markets – and "precluded competitors," described as "firms that are most likely to enter but have until recently been prevented or deterred from market participation by barriers to entry the 1996 Act seeks to lower." Id. ¶ 60. In this case, to the extent that either SBC or Ameritech is a precluded competitor in an area

[89] While SBC and Ameritech both provide service in the St. Louis LATA (LATA 520), they serve mutually exclusive territories (SBC in Missouri and Ameritech in Illinois) and are not actual competitors. Neither SBC nor Ameritech had even any preliminary plans to enter the local or bundled services markets in any other areas where the other is the incumbent LEC and, accordingly, there is no reason to analyze such markets further. Cf. BA/NYNEX at ¶ 57 ("Bell Atlantic was planning entry not only in LATA 132, but in other parts of the NYNEX territory as well.").

in which the other is the incumbent LEC, there is no reason to believe that it is a "most significant market participant" as that term was used in BA/NYNEX. Moreover, because there are numerous actual and precluded competitors in each of the relevant product markets (and in each customer segment of those markets) in the Chicago and St. Louis LATAs, there is no cause for competitive concern. See id. ¶ 65.

The Commission recognized in BA/NYNEX that "medium sized businesses are targeted by specialized firms that do not necessarily seek to address the mass market." Id. ¶ 53. In both Chicago and St. Louis there are numerous CLECs serving such customers. See Tables 5, 6, 9-12 at the "Tables" attachment. Those businesses are also served by the major IXCs. Accordingly, as the Commission found in BA/NYNEX, there are numerous market participants in that customer segment of all the relevant product markets, and no reason to believe that either SBC (in Chicago) or Ameritech (in St. Louis) is a significant market participant whose elimination through merger will result in competitive harm.

The same is true for the large business/government user segment. These sophisticated customers purchase telecommunications services, including local, long distance and bundled services, under individually negotiated contracts and are pursued by numerous vendors. Kahan Aff. ¶ 30; see also BA/NYNEX ¶ 53. Here, too, as in BA/NYNEX, there is no reason to believe that the merger will eliminate a significant market participant or otherwise lessen competition.

Thus, in BA/NYNEX, the Commission's analysis focused on the mass market for local and bundled services. In that case, the Commission found that Bell Atlantic was likely to enter the mass market for local and bundled services in New York; that it was one of a few most significant market participants; and, based on the record, it was the most significant competitor to the incumbent, NYNEX. As we discuss in detail below, the record in this case inevitably leads to a different conclusion.

SBC had rejected attempting to enter the Chicago market and cannot be regarded as a significant market participant. In St. Louis, Ameritech developed a limited plan to offer local service (including bundled services) in that one area by reselling SBC service to its existing base of residential cellular customers. The plan was defensive, designed to protect Ameritech's base of existing cellular customers. Ameritech had no plans to offer facilities-based local service, either wired or wireless. It could not be considered a significant market participant in St. Louis and is certainly less significant than such competitors as AT&T/TCG/TCI, WorldCom/MCI/MFS/Brooks/UUNet and Sprint. In any event, the planned divestiture of one of Applicants' cellular systems in St. Louis, permitting the new competitor to pursue the Ameritech resale strategy if it so chooses, will fully resolve any arguable loss of competition there. See Schmalensee/Taylor Aff. ¶¶ 32, 35.

a. Chicago

There are many actual and potential competitors in the markets for local and bundled services in Chicago. See Pampush Aff. ¶ 9, Attachment A; Schmalensee/Taylor Aff. ¶¶ 42-65; Map 25 at the "Maps" attachment; Tables 6, 10 and 12 at the "Tables" attachment; Section IV, below. The Affidavit of Stan Sigman, President of SBC Wireless, Inc., demonstrates that SBC is neither an actual nor a potential competitor in local or bundled services in Chicago because it had no plans to enter those markets.[90] It

[90] The discussion in this section would be no different if the relevant geographic market were defined as the Chicago metropolitan area rather than the Chicago LATA.

certainly is not one of the most significant market participants. See Schmalensee/Taylor Aff. ¶¶ 42, 65. Indeed, in BA/NYNEX the Commission found that non-adjacent out-of-region Bell Companies – like SBC in the case of Chicago[91] – were not among the most significant market participants in New York, and the same conclusion applies here. Id. ¶ 48; see BA/NYNEX ¶ 93. For this reason alone, further analysis of SBC as a competitor in Chicago is unnecessary.

In any event, SBC is not even a potential competitor. SBC considered – and rejected – entry into the local exchange business in Chicago. Beginning in late 1995, SBC considered whether it could provide local exchange service to its out-of-region cellular customers. Sigman Aff. ¶ 3. It selected the Rochester, New York MSA as the pilot market for such a venture and entered the market in early 1997, reselling the service of the incumbent LEC, Frontier. Id. ¶ 7.

SBC's actual experience in Rochester was quite disappointing. SBC won few customers. Moreover, the customers it gained were not buying cellular service or generating other service revenues, and presented collection difficulties. Id. ¶¶ 7-8. SBC thus projected unprofitable operations for an unacceptably long period. Id. ¶ 9. By the fall of 1997, well before and independently of any consideration of this merger, the management of SBC's cellular business decided to discontinue the experiment and stop

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Accordingly, references to Chicago or the Chicago LATA may be understood to refer as well to the Chicago metropolitan area.

[91] While SBC's region is "adjacent" to Ameritech's in the sense that they share a border between Illinois and Missouri, SBC's nearest local exchanges are hundreds of miles from Chicago. SBC sells cellular service in Chicago under the Cellular One brand name, which proved to be ineffective as a brand name for local exchange service in Rochester. Sigman Aff. ¶ 13. Thus, SBC has no more "visibility" in Chicago than Bell Atlantic or BellSouth, and considerably less than the major IXCs.

marketing to new customers, although SBC continues to provide local exchange service to the pilot customers in Rochester in order to preserve their goodwill. Id. ¶¶ 17-18.

Prior to the Rochester experiment, SBC had considered offering local exchange service in its other out-of-region wireless markets, including Chicago. Id. ¶ 10. It never took any steps toward such entry, however. The Rochester experiment led SBC to conclude that its cellular business did not provide a useful base for entering the local exchange business. Id. ¶¶ 11-16. During the summer of 1997, when it became clear that the Rochester experiment was not successful, SBC discontinued its consideration of providing local exchange service in any of SBC's other out-of-region cellular markets, including Chicago.[92] Id. ¶ 17.

In contrast to SBC, the most significant mass market participants would include AT&T/TCG/TCI, WorldCom/MCI/MFS/Brooks/UUNet and Sprint, just as the Commission concluded with respect to New York in BA/NYNEX. See BA/NYNEX ¶ 82; Schmalensee/Taylor Aff. ¶¶ 48-56. AT&T has millions of long distance and wireless customers in Chicago, as well as the best recognized brand name in telecommunications, and it will have direct access to over one million households and tens of thousands of businesses in Chicago through TCI and TCG, respectively. See Map 25 at the "Maps" attachment; Schmalensee/Taylor Aff. ¶¶ 49-52. Indeed, Chicago is one of TCI's major cable clusters. WorldCom/MCI/MFS/Brooks/UUNet also has extensive CLEC facilities in Chicago. Schmalensee/Taylor Aff. ¶¶ 53-54. It and Sprint likewise

[92] SBC also had no plans whatsoever to provide local exchange service in the parts of Illinois outside Chicago in which it provides cellular service, or elsewhere in Illinois or Ameritech's other four states.

have many thousands of customers in Chicago and well-recognized names. Id. ¶¶ 54-55. These firms are clearly more significant competitors to Ameritech than SBC. Id. ¶ 56.[93]

b. St. Louis

As in the case of Chicago, the list of actual and precluded competitors for local and bundled services in the St. Louis LATA is a long one.[94] See Section IV.C.1, below; Schmalensee/Taylor Aff. ¶¶ 43-64; Map 15 at the "Maps" attachment; Tables 5, 9 and 11 at the "Tables" attachment. While Ameritech had proposed an embryonic entry into bundled local and wireless service in St. Louis, the accompanying Affidavit of Paul G. Osland makes clear that that effort was defensive in nature and limited to reselling ILEC service to Ameritech cellular customers. In fact, it resembles somewhat the venture that SBC unsuccessfully attempted in Rochester. It does not make Ameritech a significant market participant in St. Louis.

In early 1997, the management of Ameritech's cellular business unit perceived that its new wireless competitors in St. Louis – including AT&T and Sprint PCS, which have PCS licenses, and Nextel – were in a position to offer local exchange service

[93] Because Ameritech does not yet have authority to provide interLATA service to its in-region customers, it cannot yet provide bundled services. Other competitors in the market, such as WorldCom/MCI, WinStar, USN and Focal, face no such constraints and are providing bundled service to certain business customers. See Pampush Aff. ¶ 8, Attachment A. These competitors could easily expand their service. For that additional reason there is no potential anticompetitive effect in a market for bundled services.

[94] If the geographic market were defined as the St. Louis metropolitan area rather than the St. Louis LATA, the analysis would be no different. Thus, references to St. Louis or the St. Louis LATA should be understood to refer as well to the St. Louis metropolitan area. Ameritech is the incumbent LEC in some suburban areas in the Illinois portion of the metropolitan area but its territory and SBC's are mutually exclusive and there is no competition between them other than that described in this section. There is no evidence that SBC had any interest in competing in Ameritech's suburban St. Louis exchanges. Any visibility or name recognition that Ameritech had in St. Louis would derive mainly from its wireless presence in St. Louis. Indeed, Ameritech's plans regarding local exchange entry in St. Louis, discussed below, were based entirely on its wireless assets.

bundled with wireless service. Osland Aff. ¶ 4. As a defensive strategy to protect its cellular customer base, Ameritech considered bundling resold local exchange service with its cellular product in St. Louis. Id. The original plan was to resell Southwestern Bell Telephone ("SWBT") service to Ameritech residential and small business cellular customers. Id. ¶ 6. That plan, known as Project Gateway, was scaled back to target only existing residential cellular subscribers (less than half the customer base) due to difficulties with system interfaces and development. Id. Project Gateway did not assume any facilities-based local service and required no use of existing Ameritech wireline facilities. Id. ¶ 7. The proposed service packages were to be priced to attract cellular customers and were neither intended nor expected to appeal to non-cellular customers. Id.

A trial was begun in January 1998, and approximately 390 trial customers (Ameritech employees and their families) have signed up for the service. Id. ¶ 8. The trial identified a number of financial, marketing and operational problems, including a confusing bill format, pricing and order processing problems, and the financial impact of increased competition in St. Louis, which reduced the economic attractiveness of some packages. Id. ¶¶ 8, 11. These issues were under review by Ameritech and had not been resolved at the time the proposed merger was announced. Ameritech's current financial projections for Project Gateway indicate that the project would produce a net income loss for three years and a free cash flow loss for five years. Id. ¶ 9. Ameritech put the project on hold for several reasons, including the financial projections, the issues raised by bill format and rate structure, operational problems, the other demands on the resources of Ameritech Cellular, the failure of wireless competitors to offer bundled service and uncertainties created by the planned merger with SBC. Id. ¶¶ 10-14. Even had Ameritech decided to go forward with Project Gateway, a limited resale offering to its residential cellular customers would not have constituted a significant entry into the local exchange business in St. Louis. Schmalensee/Taylor Aff. ¶ 35. Indeed, Ameritech never had any plan to offer facilities-based local service in St. Louis. Osland Aff. ¶ 7.

Moreover, as in Chicago, the major IXCs are clearly significant competitors in St. Louis. See Schmalensee/Taylor Aff. ¶¶ 48-56. Both AT&T/TCG/TCI and WorldCom/MCI/MFS/Brooks/UUNet have large customer bases and actual CLEC facilities in St. Louis. See Map 15 at the "Maps" attachment. AT&T/TCG also has a large number of existing long distance customers and PCS subscribers. With the addition of TCI, which has a major St. Louis cluster, AT&T will reach 185,500 cable households in SBC's service area.[95] MFS, one of WorldCom's principal CLEC operations, has at least 81 route miles of fiber and at least 38 buildings on-net in St. Louis,[96] which will be combined with many MCI long distance customers. Sprint has both long distance and PCS customers in the market. All three of the major IXCs enjoy equal or greater brand identification in St. Louis and, in light of their existing facilities and customer bases, are clearly more significant market participants than Ameritech. Schmalensee/Taylor Aff. ¶ 56.

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[95] See TCI, Market Profile: St. Louis DMA (visited July 17, 1998), <http://www.tcimediaservices.com/stlouis/index.html>. TCI also serves another 70,000 subscribers in the Illinois portion of the St. Louis DMA, where Ameritech is the LEC. See id.

[96] See New Paradigm Resources Group and Connecticut Research, 1997 CLEC Report: Annual Report on Local Telecommunications Competition 450 (8th ed. 1997).

In any event, Applicants will have to divest one of their overlapping cellular systems in St. Louis. If the Ameritech system is sold, the purchaser will possess the same assets that Ameritech could have used as the base for CLEC entry in St. Louis – its cellular customer base and network – and thus would have the same ability as Ameritech to bundle wireless and local services.[97] Id. ¶ 36.

4. The Merger Will Not Produce Any Adverse Competitive Effects

As demonstrated above, there is no significant direct competition today between SBC and Ameritech (apart from the cellular overlaps that will be cured), and no markets in which SBC and Ameritech are significant potential competitors. As Drs. Schmalensee and Taylor conclude, applying the standards the Commission applied in BA/NYNEX and the framework of the 1992 Horizontal Merger Guidelines, this merger poses no competitive concerns. Schmalensee/Taylor Aff. ¶¶ 65-66. The same conclusion holds under the unilateral effects, coordinated effects and dynamic effects analyses considered by the Commission in BA/NYNEX.[98]

a. Unilateral Effects

The Commission applied a unilateral effects analysis in BA/NYNEX not unlike that in Section 2.21 of the 1992 Horizontal Merger Guidelines. BA/NYNEX ¶ 102. This analysis is applied to mergers in markets for differentiated products and seeks to determine whether one of the merging firms has a leading position while the other is considered by buyers to be the "next best choice," meaning that the merger of the two

[97] This discussion assumes, for purposes of exposition, that Applicants will divest Ameritech's cellular license in St. Louis. The analysis and result would be no different if SBC's cellular license were divested.

[98] See, e.g., BA/NYNEX at ¶¶ 102, 114, 125.

may permit the merged firm to raise its price with less substitutability constraint than it faced before the merger. See 1992 Horizontal Merger Guidelines § 2.21. Assuming that mass market local or bundled services are differentiated products to which this analysis would apply, the question is whether consumers of those services in the Chicago LATA would consider SBC the next best choice after Ameritech, and whether consumers in the St. Louis LATA would consider Ameritech the next best choice after SBC.

In BA/NYNEX, the Commission found a likelihood of such unilateral effects. That conclusion was based on several critical findings for which there is no supporting evidence here. First, the record showed that Bell Atlantic planned a substantial entry into the New York LATA. Here, SBC had no such plans in Chicago, and we have discussed the limited nature of Ameritech's plans in St. Louis. Second, the Commission found that Bell Atlantic would be an important second choice for mass market consumers in the New York LATA. See ¶¶ 105-06. Here, there is no evidence that either SBC or Ameritech would be an important second choice for the other's local exchange customers.

Rather, the major, national interexchange carriers (including their CLEC affiliates) are the most significant "second choice" competitors. AT&T has expertise in the operation of telecommunications networks, incomparable brand name recognition, substantial infrastructure (augmented by its pending acquisitions of TCG and TCI), and huge customer bases in both SBC's and Ameritech's markets. Schmalensee/Taylor Aff. ¶¶ 49-52. WorldCom/MCI/MFS/Brooks/UUNet also has expertise in operating local telecommunications networks for sophisticated customers, as well as substantial infrastructure, customer base and name recognition in the two companies' regions. Id.

¶¶ 53-54. Sprint has extensive local exchange expertise (through United and Centel) and also many customers and broad name recognition. Id. ¶ 55. Each of these competitors is a far more effective constraint on SBC and Ameritech than either of the merging parties would be on the other. Id. ¶¶ 48-56.

In other words, there is no reason to believe that the merger will remove a significant current constraint on the competitive behavior of either of the merging parties, and it is clear that sufficient future competition – from the major IXCs as well as the myriad of CLECs, niche firms and others that have been very successful at winning profitable business away from both Ameritech and SBC – will continue. Applying the unilateral effects analysis to this merger in these markets leads to the same result as application of the traditional potential competition test – there are and will continue to be enough sources of competition in these markets that the merger will not adversely affect competition or the public interest.

b. Coordinated Effects

There is no reason to believe that the merger will increase the likelihood of coordinated interaction in any of the relevant markets. Indeed, the National-Local Strategy itself plainly refutes any argument that the merger could facilitate coordinated behavior among large LECs. Furthermore, in a market with a large incumbent, all of the other market participants have a powerful incentive to compete and expand output. In other words, whether Ameritech competes in St. Louis or not, AT&T (especially in light of its pending mergers with TCI and TCG), WorldCom/MCI/MFS/Brooks/UUNet, Sprint, the many CLECs and all of the other competitors will continue to try to expand their business and compete vigorously with SBC in order to build their customer bases. Nor is there any reason to believe that such emerging competitors would be likely to collude among themselves or that such coordination would have any impact on the market.

c. Dynamic Effects

The Commission also considers the merger's effect on dynamic market performance and, in particular, whether alternative entry into a local market by an incumbent LEC would affect the process of opening local markets to competition. See BA/NYNEX ¶¶ 125-27. Here, as discussed below, those effects are unambiguously positive. See Carlton Aff. ¶¶ 10-11, 42, 46; Gilbert/Harris Aff. ¶¶ 61-63.

The accompanying Affidavits of Stephen M. Carter of SBC and Terry D. Appenzeller of Ameritech detail the extensive efforts that both companies have made to open their respective local markets to competition. See also Table 1 at the "Tables" attachment. SBC has spent more than $1 billion to date to comply with Section 251 of the Communications Act and the competitive checklist under Section 271, and expects to spend more than $1.5 billion by the end of 1998. Carter Aff. ¶ 10. Ameritech has spent approximately $2 billion to date to do the same. Appenzeller Aff. ¶ 10. Over 3,300 SBC employees and over 1,200 Ameritech employees have worked to fulfill Section 251 and 271 requirements, such as customer service, operations support systems ("OSS"), number portability, trunking, local service centers and computer systems. Carter Aff. ¶ 7; Appenzeller Aff. ¶¶ 8, 9.

CLECs are operating successfully in SBC's and Ameritech's regions, as a result of these efforts. See Tables 1, 3, 4, 7, 8, 11, 12, and 13 at the "Tables" attachment. SBC was the first ILEC to negotiate an interconnection agreement under the 1996 Act. Carter Aff. ¶ 5. To date SBC has negotiated 374 interconnection agreements, 93 percent of which have been signed without arbitration. Id. Ameritech has 175 approved interconnection agreements with 39 carriers. Appenzeller Aff. ¶¶ 15, 30.

Pursuant to these interconnection agreements, SBC has provided more than 350,000 interconnection trunks to CLEC customers and exchanged more than 14 billion minutes of local and Internet traffic with CLEC networks. See Attachment 1 to Carter Aff. CLECs have attached their lines to hundreds of thousands of SBC poles and occupy 8.2 million feet of SBC conduit space. Id. They have received more than 60,000 unbundled local loops and nearly 350 unbundled switch ports from SBC. Id. CLECs are able to access these facilities and interconnect with SBC's local networks using 490 operational physical collocations and 58 virtual collocation agreements. Id.

Similarly, Ameritech has leased approximately 94,600 unbundled local loops to CLECs. Appenzeller Aff. ¶ 48. As of May 1, 1998, competing carriers were physically collocated in 113 and virtually collocated in 166 Ameritech wire centers, with 77 more wire centers scheduled for activation in the third quarter of 1998. Id. ¶ 41. This represents 23 percent of Ameritech's wire centers, but those centers serve 63 percent of the business lines and 50 percent of the residential lines in Ameritech's territory, showing how CLECs have focused on the most important end offices. Pampush Aff. ¶ 14; Appenzeller Aff. ¶ 41. Ameritech also has made available nondiscriminatory access to poles, ducts, conduits and rights-of-way. Id. ¶ 26. Competing carriers are offering service in more than 80 percent of the communities that Ameritech serves, including virtually every community that Ameritech serves in Illinois and Michigan. Id. ¶ 12.

As the process of implementing the 1996 Act continues to unfold, ongoing progress has been made by both companies, and we expect this progress to continue.

Thus, any barriers to local exchange entry that may have existed in the past have been and are continuing to fall.

The merger will not impede progress in implementing the 1996 Act. That process is ongoing and irreversible. Indeed, the overall effect of the merger is to advance that process by enabling SBC's and Ameritech's entry into numerous local markets via the National-Local Strategy and the inevitable responses of others who will enter SBC's and Ameritech's markets.

d. Potential Entry and Expansion

A merger cannot substantially lessen competition in a market if new entry can easily occur in that market.[99] In this regard, expansion by small firms can have the same procompetitive effect as new entry.

In BA/NYNEX, the Commission concluded that there remained barriers to new entry and expansion in the New York LATA. As time goes on and the process of market-opening advances, those types of barriers are disappearing, as is demonstrated by the substantial and effective entry that has occurred into local and bundled services in Chicago and St. Louis. Schmalensee/Taylor Aff. ¶ 43. More such entry is on the way. Pampush Aff. ¶ 7; see also Section IV.C.1, below. If the merger had any potential for raising price, the entry trend would only accelerate.

In fact, this merger will be a tremendous stimulus to new entry in the relevant markets – not because it will reduce competition, but because it will bring new competition to dozens of markets outside the SBC and Ameritech regions. This, in turn,

[99] See, e.g., United States v. Baker Hughes, Inc., 908 F.2d 981, 987 (D.C. Cir. 1990); Oahu Gas Serv. v. Pacific Resources, Inc., 838 F.2d 360, 366 (9th Cir. 1988); United States v. Waste Mgmt., Inc., 743 F.2d 976, 981-83 (2d Cir. 1984); 1992 Horizontal Merger Guidelines § 3.0.